

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**JENNIFER PIGGOTT and
SLADE PIGGOTT,**

Plaintiffs,

v.

GRAY CONSTRUCTION, INC.,

Defendant/Third-Party Plaintiff,

v.

**COOPER'S STEEL
FABRICATORS, INC., et al.,**

Third-Party Defendants.

Case No.: CV-06-1158

**GRAY CONSTRUCTION, INC.'S OPPOSITION TO Hwashin AMERICA
CORPORATION'S MOTION TO DISMISS**

Gray Construction, Inc. ("Gray") respectfully submits this Opposition to Hwashin America Corporation's ("Hwashin") Motion to Dismiss. In support of this Opposition, Gray states as follows:

1. On or about November 17, 2006, Plaintiffs Jennifer and Slade Piggott ("Mr. and Mrs. Piggott") filed a Complaint in the Circuit Court of Butler County, Alabama. (See Plaintiffs' Complaint.). The action was removed from the Circuit Court of Butler County, Alabama to the United States District Court for the Middle District of Alabama on December 29, 2006. (Notice of Removal, Document No. 2 in the Court Docket.).

2. On June 8, 2007, Gray filed a Third-Party Complaint naming Hwashin as a Defendant. (Third-Party Complaint, Document No. 26 in the Court Docket.). On July 23, 2007, Hwashin filed a Motion to Dismiss Gray's third-party claims against it. (Motion to Dismiss, Document No. 83 in the Court Docket.).

3. On August 16, 2007, Gray filed its Opposition to Hwashin's Motion to Dismiss. (Response in Opposition, Document No. 107 in the Court Docket.). On August 23, 2007, Hwashin filed its Reply to Gray's Opposition to Hwashin's Motion to Dismiss. (Reply to Response to Motion to Dismiss, Document No. 115 in the Court Docket.).

4. On September 12, 2007, the Court held a Status Conference. On September 14, 2007, the Court entered an Order stating "the parties are given leave to file motions to amend, motions to withdraw, and other pleadings. The deadline for filing any such motions or pleadings is September 21, 2007". (September 14, 2007 Order, Document No. 120.).

5. Pursuant to the Court's Order of September 14, 2007, Gray filed its First Amended Third-Party Complaint asserting an additional claim of common law indemnity against Firestone Building Products Company ("Firestone"). (Amended Third-Party Complaint, Document No. 122 in the Court Docket.). Gray's Amended Third-Party Complaint made no substantive changes to its Third-Party Complaint, other than the addition of a claim against Firestone.

6. On October 5, 2007, Hwashin filed its Motion to Dismiss Gray's Amended Third-Party Complaint. (Motion to Dismiss, Document No. 137.). Hwashin's Motion states simply that it adopts and realleges all arguments put forth in its previous Motion to Dismiss and Reply Brief in Support of Motion to Dismiss. (Id.).

7. Gray hereby adopts and realleges as its opposition to Hwashin's Motion to Dismiss Gray's First Amended Third-Party Complaint all arguments and law put forth in its Opposition to Hwashin's Motion to Dismiss Gray's original Third-Party Complaint. (Gray's Opposition to Hwashin's Motion to Dismiss, Document No. 107 in the Court Docket.).

WHEREFORE, Gray respectfully requests this Court enter an Order denying Hwashin's Motion to Dismiss Gray's First Amended Third-Party Complaint.

Done this 24th day of October, 2007.

By: *E. Britton Monroe*

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of October, a true and correct copy of the foregoing has been furnished by electronic filing, upon the following parties:

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